

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN CINDY YOUNKIN**, on February 21, 2001  
at 7:00 P.M., in Room 152 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Cindy Younkin, Chairman (R)  
Rep. Rick Dale, Vice Chairman (R)  
Rep. Gail Gutsche, Vice Chairman (D)  
Rep. Keith Bales (R)  
Rep. Rod Bitney (R)  
Rep. Dee Brown (R)  
Rep. Gilda Clancy (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Larry Cyr (D)  
Rep. Ron Erickson (D)  
Rep. Christopher Harris (D)  
Rep. Linda Holden (R)  
Rep. Joan Hurdle (D)  
Rep. Rick Laible (R)  
Rep. Jeff Laszloffy (R)  
Rep. Douglas Mood (R)  
Rep. Bob Story (R)  
Rep. Brett Tramelli (D)  
Rep. David Wanzenried (D)

**Members Excused:** None.

**Members Absent:** Rep. Bill Eggers (D)

**Staff Present:** Rhonda Van Meter, Committee Secretary  
Larry Mitchell, Legislative Branch

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted:  
Executive Action: HB 459

**EXECUTIVE ACTION ON HB 459**

*{Tape : 1; Side : A; Approx. Time Counter : 0.1}*

**Motion:** REP. MOOD moved that HB 459 DO PASS.

**Discussion:**

Larry Mitchell passed out amendments HB045901.ate  
**EXHIBIT**(nah43a01).

**Motion:** REP. MOOD moved that the **AMENDMENTS HB045901.ATE FOR HB 459 BE ADOPTED.**

**Discussion:**

REP. MOOD explained the amendments.

**Vote:** Motion carried 12-8 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting no.

**Motion:** REP. MOOD moved that HB 459 DO PASS AS AMENDED.

**Discussion:**

REP. WANZENRIED asked REP. MOOD if he agrees with the fiscal note **EXHIBIT**(nah43a02). REP. MOOD stated, DNRC is missing from the fiscal note. They do projects from the inside out, mainly on timber sales or other projects on state lands. He stated that he does not agree with the fiscal note as it stands. Numbers 11 - 15 have to do with the coordination with MEPA and NEPA and the adopted amendments make it clear that NEPA is the act that takes precedence. He stated that he does not believe there are additional costs involved in the law. The bill puts sideboards and definitions into a bill that currently has none. HB 459 will make it easier for the departments to comply with the law because it gives them some guidance and direction as to what is going to make up the alternative analysis. There is some discussion in the fiscal note about the project sponsor and the ability to go to an appeal board and they estimate there would be one a year. He stated that he feels that number is probably about right.

REP. GUTSCHE asked REP. MOOD, regarding numbers 5 - 7 of the fiscal note, which say there will be two EIS's completed a year at the cost of \$10,000 and that the project sponsor will agree to pay for the costs. Number 7 says, "If the project sponsor were not willing to pay for the cost of the economic analysis, the cost of the analyses would have to be absorbed by the general fund." There is no mention on the note about any costs coming

out of the general fund. How does this work? **REP. MOOD** stated that he does not know the process in order to make that determination. It would indicate under normal circumstances they have asked the project sponsor to pay for the costs. **REP. GUTSCHE** stated that she agrees but there is no way of making them pay if they don't want to. Some general funds may need to be used. **REP. GUTSCHE** then asked, regarding #14, where are we told that the federal government will match all of the funding? **REP. MOOD** stated that the Department of Transportation projects are done in conjunction with the federal government.

**REP. YOUNKIN** added, regarding #7, that means absorbed by the general fund appropriation to the department. It is not going to be new money from the general fund.

**REP. STORY** stated they are talking about those EIS's that DNRC has to do anyway. There is not "new money" being used. Department of Transportation money is pretty much all gas tax, that's how they fund their projects.

**REP. MOOD** commented on page 2, line 23 of the bill. He stated, currently the department tends to concentrate on the negatives when they write an EIS. This is trying to, through the EIS, determine whether or not the project is going to be able to comply with the laws that do apply. That is the way it should be. It is very important to add lines to this bill saying that the departments must analyze what the beneficial aspects of a project are. We should know what environmental and economic parts of these projects we are forgoing as a result of not doing the action. That is the real strength of the bill and would help the analysis process.

**REP. ERICKSON** asked **REP. MOOD**, regarding amendment number 3, once that action comes about we take time out of the timing that might come through with Senator Grimes' bill. **REP. MOOD** stated yes. If a project sponsor is appealing to the board the time it takes for that appeal to take place is taken out of the time lines that are in SB 377. **REP. ERICKSON** stated that he is pleased with that amendment. He also stated that his sense is that numbers 2 and 4 are going to take a lot of time. He then asked **REP. MOOD** why he does not have any amendments on those two issues. **REP. MOOD** stated he thinks those two issues are a particularly strong and important portion of the bill. By the time they go through the EIS process and get to that stage they should have all the information they need in order to make those conclusions. **REP. ERICKSON** stated that he respectfully disagrees.

**REP. STORY** stated that section 202 of the act says that the agency will charge fees to applicants and 203 is the fee

schedule. He then referred to Rep. Kasten's bill that had to do with game farms. It stated that the fee schedule is based on the cost of the project.

**REP. YOUNKIN** stated there is provision in statute for determining a fee that the project sponsor or the applicant has to pay to the department conducting any environmental review. That fee is based upon the cost of the project. Therefore there is money coming in from the project sponsor no matter what.

**REP. STORY** stated that the mine in Lincoln went through a lengthy process which kept getting shut down because they didn't pay their fees. That is how the process works with private individuals.

**REP. HARRIS** asked **REP. MOOD**, by taking out project sponsor how do we evaluate economic feasibility, what is the standard and the criteria? **REP. MOOD** stated there are opportunities for the project sponsor to comment on various alternatives. We are trying to get a complete analysis of what is necessary in order to comply with the law. That is what an EIS or EA is trying to do. This will put a balance between what the agency believes is necessary in order to comply with those laws and what the project sponsor can do in terms of his economic strength. Between number 1 and number 2 the balance occurs and the opportunity occurs for the project sponsor to have input into what economic feasibility is for that individual. By taking those words out we are not limiting the agency from analyzing the alternatives based upon the project sponsor's financial capability. We are keeping the current emphasis on what is necessary in order to comply with the substantive laws. He stated that he would not have taken those words out had it not been for the second section which balances the feasibility portion of it. **REP. HARRIS** asked, for example, if *Microsoft* was the project sponsor, what is economically feasible for *Microsoft* might be vastly different from what might be economically feasible for a bankrupt company. Would that be fair to say based on the next provision? **REP. MOOD** answered that he thinks that is absolutely true and entirely appropriate.

**REP. WANZENRIED** asked **REP. MOOD**, if the project sponsor disagrees and doesn't feel that the reviewing agency has given due consideration to the proposed alternative from a feasibility standpoint that then can be appealed to the appropriate board? **REP. MOOD** stated that is correct. **REP. WANZENRIED** asked, then the only question to be resolved is the economic feasibility? **REP. MOOD** stated, if an alternative has been proposed that the project sponsor thinks is unnecessary and adds extra financial burden, that is an issue that will be taken up with the appropriate board.

**REP. HURDLE** asked **REP. MOOD**, when you are creating the balance between the sponsor and the EIS process could it get to the point where the sponsor would have to prove that they couldn't afford to do something and would that be okay? **REP. MOOD** stated no. If, at the end of the Environmental Analysis, the department that is granting the permit determines that the project sponsor is not financially capable of mitigating the project to the point that they need in order to comply with the law then the no action alternative would recommend no action because of those reasons. The project would take place based upon two things; the measures that are necessary in order to comply with the substantive laws and whether or not the project sponsor is capable of complying with those laws. **REP. HURDLE** asked what "no action alternative" means. **REP. MOOD** stated, the department writes several different levels of activity in an EIS. Typically they write 4 to 5 alternatives. Amongst those alternatives there is a no action alternative. If nothing happens as opposed to something happening, that is a no action alternative. The no action alternative talks about the consequences of not doing the project. There is a stipulation in the bill stating if there is a no action alternative there should be a further analysis of what is the forgone economic opportunity, etc.

**Vote:** Motion carried 12-8 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting no.

**ADJOURNMENT**

Adjournment: 7:35 A.M.

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REP. CINDY YOUNKIN, Chairman

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HOLLY JORDAN, Secretary

CY/HJ

**EXHIBIT (nah43aad)**